A

SURUHANJAYA PERSAINGAN v. MYTEKSI SDN BHD & ORS

COURT OF APPEAL, PUTRAJAYA
S NANTHA BALAN JCA
LIM CHONG FONG JCA
AHMAD KAMAL MD SHAHID JCA
B [CIVIL APPEAL NO: W-01(A)-425-08-2023]
19 MARCH 2025

Abstract – *The Malaysia Competition Commission ('MyCC') is obliged to ensure a proper investigation is carried out pursuant to Part III of the Competition Commission Act 2010 ('Act') regarding complaints made against a company for discriminatory conduct. In issuing a proposed decision imposing financial penalty on a company, the MyCC must have given prior notification regarding the investigation and its power to request information, documents and statements under s. 18(1)(a) and (b) of the Act must be exercised reasonably and in accordance with the Act. Failure to do so would deprive the company of the opportunity to understand the precise complaint(s) against it, rendering the investigation tainted with procedural impropriety.*

C

D

E

CIVIL PROCEDURE: *Judicial review – Appeal against – Infringement penalty under Competition Commission Act 2010 – Investigation conducted by Malaysia Competition Commission ('MyCC') regarding complaints against company providing e-hailing services for discriminatory conduct – Proposed decision issued imposed financial penalty on company – Whether judicial review application to quash proposed decision premature – Whether internal remedial procedure available – Whether proposed decision illegal or ultra vires – Whether MyCC's investigation tainted with procedural impropriety – Competition Commission Act 2010*

F

COMPETITION LAW: *Proposed decision – Imposition of financial penalty – Infringement penalty under Competition Commission Act 2010 – Investigation conducted by Malaysia Competition Commission ('MyCC') regarding complaints against company providing e-hailing services for discriminatory conduct – Proposed decision issued imposed financial penalty on company – Whether MyCC's investigation tainted with procedural impropriety – Whether proposed decision illegal or ultra vires – Competition Commission Act 2010*

G

H

This was an appeal against a judicial review decision relating to infringement penalty under the Competition Commission Act 2010 ('Act'). By an agreement made between Uber Malaysia Sdn Bhd ('UM') and the second respondent, a company providing, *inter alia*, 'Grab Car' and 'Grab Express', UM transferred all its local assets and businesses to the second respondent. Upon receiving a complaint from a Grab driver ('complainant'), the Malaysia Competition Commission ('appellant'), initiated an investigation.

I

According to the complainant, the second respondent banned him from driving for Grab for 'promoting other e-hailing services to riders' ('2019 complaint'). Additionally, the appellant also investigated complaints received alleging that the second respondent, in abuse of its dominant market position, imposed unfair pricing practices through discriminatory conduct towards Grab taxi drivers in favour of Grab car drivers ('2018 complaints'). As a result of the aforementioned investigations, the appellant issued its proposed decision ('proposed decision') which essentially imposed a financial penalty of RM86,772,76 ('fine') on all the respondents, failing which they would be subjected to a daily penalty of RM15,000 ('penalty') from the date of service of the proposed decision pursuant to s. 36(1) of the Act. Aggrieved by the proposed decision, the respondents commenced a judicial review application in the High Court to quash the proposed decision. The respondents contended that the proposed decision was illegal and *ultra vires* the Act, as the appellant relied on documentary evidence from the 2018 complaints to reach its proposed decision concerning the 2019 complaint. The respondents further contended that the Act required the appellant to undertake a thorough step by step investigation and the proposed decision was flawed in concluding that the respondents had infringed the prohibitions set out in Part II of the Act. In response, the appellant argued that the judicial review application filed by the respondents was premature because the proposed decision was not a final decision. The respondents must not also by-pass or supplant the domestic remedy of statutory appeal provided for in the Act. Moreover, the appellant maintained that the investigations had been conducted professionally and that the respondents had been fully aware and appraised of the nature of the investigations at all material times. Hence, the proposed decision was neither illegal nor *ultra vires* the Act. The High Court Judge ('HCJ') found in favour of the respondents ('judgment') and quashed the proposed decision and the fine and penalty imposed. Dissatisfied, the appellant appealed.

Held (dismissing appeal)
Per Lim Chong Fong JCA delivering the judgment of the court:

(1) The judicial review application commenced by the respondents was not premature. In respect of by-passing or supplanting the domestic remedy of statutory appeal, after carefully reading ss. 35 to 40 of the Act, there is no provision to appeal on a proposed decision made under s. 36(1) of the Act. In other words, there is no internal remedial procedure available, contrary to what was alluded to by the appellant. The HCJ had not committed any appealable error. (paras 27-29)

(2) The proposed decision, which emanated from the investigation, was subject to *certiorari* if the decision was tainted with illegality, irrationality or procedural impropriety. The appellant was obliged to ensure a proper investigation was carried out pursuant to Part III of the

Act on investigation and enforcement. Consequently, in issuing the proposed decision, the appellant must have given prior notification to the respondents regarding the investigation, including the subject matter thereof. Additionally, the appellant's power to request information, documents, and statements under s. 18(1)(a) and (b) of the Act must be exercised reasonably and in accordance with the Act. (paras 30 & 31)

(3) Thus, the investigation by the appellant must be predicated by a third-party complaint and tied thereto. The appellant must thereafter notify the respondents and the appellant may thereafter require any person whom the appellant believes to be acquainted with the facts and circumstances of the case to provide the information or document which is relevant to the investigation and/or making a statement providing an explanation or information. From the evidence adduced, the appellant had investigated the 2018 complaints, including notifying the respondents and obtaining their responses between February and July 2019. However, there was no evidence that the appellant notified the respondents regarding the investigation of the 2019 complaint. The appellant had not provided a reasonable explanation for this omission. This was a critical issue, as it deprived the respondents of the opportunity to understand the precise complaint(s) against them. (paras 32 & 33)

(4) Despite the absence of a formal notification regarding the 2019 complaint, the appellant requested information from the respondents between May and June 2019. Upon comparing the appellant's requests for information related to the 2018 complaints and the 2019 complaint, the latter was ambiguous and could not be meaningfully responded to. The appellant was cavalier in the carrying out of the investigation of the 2019 complaint against the respondents. This was unfair and constituted procedural impropriety. As a result, there was no appealable error by the HCJ in finding that the appellant's investigation was tainted with procedural impropriety. (paras 33 & 35)

Case(s) referred to:

MyTeksi Sdn Bhd & Ors v. Competition Commission [2022] CLJU 3438; [2022] 1 LNS 3438 CA ***(refd)***

MyTeksi Sdn Bhd & Ors v. Suruhanjaya Persaingan [2023] CLJU 1921; [2023] 1 LNS 1921 HC ***(refd)***

R (On The Application Of The Garden And Leisure Group Ltd) v. North Somerset Council And Another [2003] EWHC 1605 ***(refd)***

R (Shrewsbury And Atcham Borough Council) v. Secretary Of State For Communications And Local Government [2008] 3 All ER 548 ***(refd)***

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***

Vasudevan Vazhappulli Raman v. T Damodaran PV Raman & Anor [1981] CLJ 84; [1981] CLJ (Rep) 101 FC ***(refd)***

Legislation referred to:
Competition Act 2010, ss. 18(1)(a), (b), 36(1)
Rules of Court 2012, O. 53 r. 2(3)

For the appellants - Tommy Thomas, Mervyn Lai Wei Shiung; Alicia Gomez & Wong Ting Ying; M/s Tommy Thomas
For the respondents - Malik Imtiaz Sarwar, Lim Yvonne, Shanthi Kandiah, Yo Yi Yun, Azyan Mohamed Ibrahim & Chin Yan We; M/s Shanthi Kandiah Chambers

[Editor's note: For the High Court judgment, please see Myteksi Sdn Bhd & Ors v. Suruhanjaya Persaingan [2023] CLJU 1921; [2023] 1 LNS 1921 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Lim Chong Fong JCA:

Introduction

[1] This is an appeal against a judicial review decision relating to infringement penalty under the Competition Act 2010 ('Act').

[2] The appellant is the Malaysian Competition Commission, commonly known as MyCC and was respondent in the High Court.

[3] The first respondent is a Malaysian incorporated private limited company providing services commonly known as 'Grab Taxi' and 'Grab Food' and was the first applicant in the High Court.

[4] The second respondent is also a Malaysian incorporated private limited company providing 'Grab Car', 'Grab Express', 'Grab Ads', 'Grab Share' and 'Grab for Business' and was the second applicant in the High Court.

[5] The third respondent is a Cayman Island incorporated company and the sole shareholder of the first respondent, as well as the majority shareholder of the second respondent. The third respondent was the third applicant in the High Court.

[6] We heard the appeal on 18 November 2024 and thereafter adjourned our decision to deliberate on the intricate arguments advanced by the parties.

[7] Having done so, we now deliver our decision along with our supporting reasons below.

Background

[8] By an agreement dated 25 March 2018 made between Uber Malaysia Sdn Bhd ('UM') and the second respondent, UM transferred all its local assets and businesses to the second respondent.

[9] Upon receiving a complaint from a Grab driver, Mohamed Radzwan bin Abdul Wahab ('complainant'), on 7 March 2019, the appellant initiated an investigation. According to the complainant, the second respondent banned him from driving for Grab for "promoting other e-hailing services to riders" ('2019 complaint').

[10] Additionally, the appellant also investigated complaints received in 2018 alleging that the second respondent, in abuse of its dominant market position, imposed unfair pricing practices through discriminatory conduct towards Grab taxi drivers in favour of Grab car drivers ('2018 complaints').

[11] As a result of the aforementioned investigations, the appellant on 23 September 2019, issued its proposed decision ('proposed decision').

[12] The proposed decision essentially imposed a financial penalty of RM86,772,943.76 ('fine') on all the respondents, failing which they would be subjected to a daily penalty of RM15,000 ('penalty') from the date of service of the proposed decision pursuant to s. 36(1) of the Act.

[13] Aggrieved by the proposed decision, the respondents commenced a judicial review application in the High Court on 30 December 2019 to quash the proposed decision.

In The High Court

[14] The respondents contended that the proposed decision was illegal and *ultra vires* the Act, as the appellant relied on documentary evidence from the 2018 complaints to reach its proposed decision concerning the 2019 complaint. The respondents also argued that no proper investigation was carried out, particularly in notifying and interviewing the respondents regarding the 2019 complaint.

[15] Furthermore, the respondents contended that the Act required the appellant to undertake a thorough step-by-step investigation and the proposed decision was flawed in concluding that the respondents had infringed the prohibitions set out in Part II of the Act.

[16] In response, the appellant argued that the judicial review application filed by respondents is premature because the proposed decision is not a final decision. The respondents must not also by-pass or supplant the domestic remedy of statutory appeal provided for in the Act.

[17] Moreover, the appellant maintained that the investigations had been conducted professionally and that the respondents had been fully aware and appraised of the nature of the investigations at all material times. Hence, the proposed decision is neither illegal nor *ultra vires* the Act.

[18] The High Court Judge on 6 July 2023 found in favour of the respondents ('judgment') and quashed the proposed decision and the fine and penalty imposed.

[19] In this regard, the learned High Court Judge held as follows in the grounds of the judgment ('GOJ') which has been reported as *MyTeksi Sdn Bhd & Ors v. Suruhanjaya Persaingan* [2023] CLJU 1921; [2023] 1 LNS 1921: A

> [56] Let me begin with the issue of whether this application for judicial review is premature and whether the applicants should have waited for the final decision before taking any further steps to protect their interests. B
>
> [57] In *MyTeksi*, Hanipah Farikullah JCA, in delivering the judgment of the Court of Appeal, held as follows:
>
> > [42] However, it does not follow that the appellants are necessarily precluded from mounting a challenge at this earlier stage. There is no automatic bar to challenge at this stage. Therefore, it is necessary to consider at the substantive stage the reasons set out by the respondent for its proposed decision. It is also necessary to consider whether a useful purpose would be served by allowing that proposed decision under s. 36 to be challenged in advance of a final decision if the court in its discretion considers that a useful purpose would be saved by such a challenge. Such challenges may be entertained in appropriate circumstances. C D
> >
> > [43] *Certiorari* is available when a decision affects rights or where through a preliminary step, it is sufficiently connected with a decision that does so (see *Hot Holdings Pty Ltd v. Creasy and Others* [1996] 134 ALR 469). E
>
> [58] With respect, under the doctrine of *stare decisis*, I am bound by this proposition. The judgment of the Court of Appeal made it in no uncertain terms that the Proposed Decision can be challenged by way of judicial review, even if it has not been crystallised into a final decision either under s. 39 or s. 40 of the CA. F
>
> [59] In short, an order of certiorari lies against the Proposed Decision since it is "sufficiently connected with" the Final Decision. It has not been shown to me that the judgment of the Court of Appeal is *per incuriam*. As held by the Federal Court in *PP v. Datuk Tan Cheng Swee & Anor* [1980] CLJU 58; [1980] 1 LNS 58; [1980] 2 MLJ 276 FC, the principle of *stare decisis* requires more than lip service. In *Megah Teknik Sdn Bhd v. Miracle Resources Sdn Bhd* [2010] 6 CLJ 745; [2010] 4 MLJ 651 CA, the Court of Appeal reasserted the proposition that a High Court is bound to follow a decision of the Court of Appeal unless it can be shown that the said decision is *per incuriam*. G
>
> [60] In any event, the applicants are not challenging the investigation process as in *Lee Ting San*. The investigation has been completed, hence the Proposed Decision. MyCC could not have made the Proposed Decision under s. 36 of the CA if the process of investigation was still ongoing. With respect, I therefore find it difficult to accept the line of argument that the investigation will be hampered when it has, for all intents and purposes, been completed. H I

A [61] As to the issue of domestic remedy, the Court of Appeal held that the CA did not provide for appeals against decisions made under s. 36(1). Hence, the CAT under the CA did not have jurisdiction to deal with complaints concerning the issuance of a Proposed Decision under s. 36(1). The right to appeal under the CA was only concerned with decisions made under ss. 35, 39 and 40 of the CA.

B [62] In the circumstances, I hold that the issue of the need of the applicants to exhaust the domestic remedy does not arise. As held by the Court of Appeal, it is not provided under the CA.

[63] I will now address the issue of whether the Proposed Decision, C which is the subject matter of this judicial review, has adhered to the requirement stipulated under s. 36 of the CA. The applicants' grievance is that the Proposed Decision was made basically on the Radzwan Complaint when the investigation was centrally on the 2018 Complaints.

[64] There was no evidence before me that MyCC had taken the investigative steps on the Radzwan Complaint in the same manner that D it had handled the 2018 Complaints. One can be forgiven in concluding that no proper investigation was made on the Radzwan Complaint-only a Proposed Decision.

[65] I am therefore of the respectful view that it is impossible for MyCC to make a fair Proposed Decision on the Radzwan Complaint and hence E held that there was a *prima facie* case of infringement under s. 36(1) when at all material times the applicants were only asked to address on the issues relating to the 2018 Complaints during the investigation process. The Proposed Decision is sufficiently connected with the Final Decision to be made by MyCC. While no Final Decision was made under s. 39 or s. 40 of the CA, the Proposed Decision based on the wrong investigation F process would have prejudiced the applications.

[66] The rule of natural justice is that no man may be condemned unheard; *Ketua Pengarah Kastam v. Ho Kwan Seng* [1975] CLJU 72; [1975] 1 LNS 72; [1977] 2 MLJ 152 FC.

[67] The correct investigation process on the correct allegation of G infringement was necessary in order to enable the applicants to defend and meet the case alleged against them adequately.

[68] The investigation process was therefore tainted with procedural impropriety. In any event, the applicants were not given the right to be heard. The end result would the Proposed Decision is equally tainted and H therefore amenable to judicial review.

[69] As to the allegation of apparent bias that MyCC is the investigator, prosecutor and adjudicator, I do not think this line of argument is tenable. The statutory role of MyCC is spelt out in CA and CCA. Learned counsel did not seriously argue before me that the steps stated in the CA and I CCA are unconstitutional for it to be struck down.

[70] On the issue of the press release, I am of the view that it was fair in that the press statements made it clear that the Proposed Decision itself is not final and that the Applicants may still make representations to challenge MyCC's Findings. While there is nothing in the CA or CCA that prohibits the publication of the Proposed Decision, which includes the proposed finding, it is more desirable that such a press release is only to be issued after MyCC has arrived at a Final Decision.

[20] The appellant is dissatisfied with the judgment and hence, on 4 August 2023 appealed to this court.

Findings Of This Court

[21] The parties primarily repeated their submissions in the High Court before us.

[22] The application in the High Court was made pursuant to O. 53 of the Rules of Court 2012, and it is evident that O. 53 r. 2(3), confers wide discretionary powers on the court, particularly in matters of remedies; see *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 AMR 433.

[23] However, our appellate function here is merely to review the decision of the High Court. In *Vasudevan Vazhappulli Raman v. T Damodaran PV Raman & Anor* [1981] CLJ 84; [1981] CLJ (Rep) 101, Abdoolcadeer J (later SCJ) held as follows with emphasis added by us:

There is a catenation of cases on this point and it will suffice to cull and refer to a few which restate the well-settled principles. An appellate court can review questions of discretion if it is clearly satisfied that the judge was wrong but there is a presumption that the judge has rightly exercised his discretion and the appellate court must not reverse the judge's decision on a mere "measuring cast" or on a bare balance as the mere idea of discretion involves room for choice and for differences of opinion (Charles Osenton & Co v. Johnston [1942] AC 130 (at page 148), 148 per Lord Wright). The Privy Council held in Ratnam v. Cumarasamy & Anor [1964] CLJU 237; [1964] 1 LNS 237; [1965] 1 MLJ 228 that an appellate court will not interfere with the discretion exercised by a lower court unless it is clearly satisfied that the discretion had been exercised on a wrong principle and should have been exercised in a contrary way or that there has been a miscarriage of justice, referring to Evans v. Bartlam [1937] AC 473.

The House of Lords, approving the decision of the English Court of Appeal in *Ward v. James* [1966] 1 QB 273, held to the same effect in Birkett [1978] AC 297 (at pages 317, 326), 317, 326. For good measure, we would refer to the felicitous expression of Goulding J., in *Re Reed (a debtor)* [1979] 2 All ER 22, 25 on this point (at page 25):

> ... the duties of an appellate court in such a matter as this are, in my judgment, confined to those normally exercisable where the lower court has a discretion, that is to say, we are not justified in setting aside or varying an order simply because we may think we

A might have come to a different conclusion ourselves on similar material. We can only interfere if either we can see that the court below has applied a wrong principle, or has taken into account matters that are in law irrelevant, or has excluded matters that it ought to have taken into account, or otherwise that no court, properly instructing itself in the law, could have come to the
B conclusion which in fact was arrived at. (emphasis added)

[24] Hence, we will first address whether the proposed decision constitutes a final decision that is amenable to judicial review. The appellant contended that it is not, whereas the second and third respondents argued otherwise.

C **[25]** This issue has, in fact, been duly considered by this court in *MyTeksi Sdn Bhd & Ors v. Competition Commission* [2022] CLJU 3438; [2022] 1 LNS 3438; [2023] 2 MLRA 697 when granting leave to commence judicial review in the High Court below. In this regard, Hanipah Farikullah JCA (now FCJ) held as follows, with emphasis added by us:

D [34] In the present case, the issue is whether a decision prior to the final exercise of a decision can be said to sufficiently affect legal rights. In this connection, the question is whether there is a decision which constitutes some condition precedent to the exercise of power which will affect legal rights.

E [35] It is important to analyse the structure of the decision-making process prescribed by the Competition Act 2010, under which the Proposed Decision was made. The Competition Act creates various decision-making schemes before the respondent makes a final decision that entails there has been an infringement of the prohibition.

F [36] The relevant provisions of the Competition Act are as follows:

36. Proposed decision by the Commission

(1) If, after the completion of the investigation, the Commission proposes to make a decision to the effect that one of the prohibitions under Part II has been or is being infringed, the
G Commission shall give written notice of its proposed decision to each enterprise that may be directly affected by the decision.

(2) The notice shall:

(a) set out the reasons for the Commission's proposed decision in sufficient detail to enable the enterprise to whom the notice is
H given to have a genuine and sufficient prospect of being able to comment on the proposed decision on an informed basis;

(b) set out any penalties or remedial action that the Commission proposes to apply; and

(c) inform each enterprise to whom the notice is given that the
I enterprise may, within such reasonable period as may be specified in the notice:

(i) submit written representations to the Commission; and

(ii) indicate whether it wishes to make an oral representation before the Commission.

37. Oral representation

If an enterprise informs the Commission, within the period specified in the notice given under s 36 that it wishes to make an oral representation, the Commission shall, before taking any relevant decision:

(a) convene a session for the oral representation to be held at a date, time and place determined by the Commission; and

(b) give written notice of the date, time and place to:

(i) the enterprise concerned;

(ii) any person who had lodged a complaint with the Commission concerning the practice that was the subject of the Commission's investigation; and

(iii) any other person whose presence at the session of the oral representation is considered necessary by the Commission.

38. Conduct of hearings

(1) Notwithstanding s 37, the Commission may at any time conduct a hearing for the purpose of determining whether an enterprise has infringed or is infringing any prohibition under Part II.

(2) If the Commission determines that a hearing is to be held, it shall give at least fourteen days' notice in writing to the enterprise concerned and to other interested third parties:

(a) recording its decision to convene the hearing;

(b) specifying the date, time and place for the holding of the hearing; and

(c) stipulating the matters to be considered at the hearing.

(3) When the Commission decides to hold a hearing, it shall also decide:

(a) whether to hold individual hearings with each of the enterprises and any other interested third parties separately or to hold a single hearing attended by all the enterprises involved and the interested third parties; and

(b) whether to hold a hearing:

(i) in public; or

(ii) in a closed session, for the purpose of protecting confidential information.

(4) The hearing shall be governed by and conducted in accordance with the procedural rules for the time being in effect, as published by the Commission.

(5) The Commission shall keep a record of the hearing as is sufficient to set out the matters raised by any person participating in the hearing.

(6) An enterprise may be represented at a hearing by:

(a) any of its authorized officers or employees;

(b) any advocate and solicitor;

(c) any person falling within the description specified for that purpose in the Commission's procedural rules; or

39. Finding of non-infringement

Where the Commission has made a decision that there is no infringement of a prohibition under Part II, the Commission shall, without delay, give notice of the decision to any person who is affected by the decision stating the facts on which the Commission bases the decision and the Commission's reason for making the decision.

40. Finding of an infringement

(1) If the Commission determines that there is an infringement of a prohibition under Part II, it:

(a) shall require that the infringement to be ceased immediately;

(b) may specify steps which are required to be taken by the infringing enterprise, which appear to the Commission to be appropriate for bringing the infringement to an end;

(c) may impose a financial penalty; or

(d) may give any other direction as it deems appropriate.

(2) The Commission shall, within fourteen days of its making a decision under this Part, notify any person affected by the decision.

(3) The Commission shall prepare and publish reasons for each decision it makes under this section.

(4) A financial penalty shall not exceed ten per cent of the worldwide turnover of an enterprise over the period during which an infringement occurred.

[37] Our immediate task is to determine, against the backdrop of the respondent's Proposed Decision, whether leave should be granted or alternatively, if obviously not frivolous or vexatious, whether the application is legally hopeless such that we are satisfied that there is no case fit for further argument as a full inter partes hearing.

[38] We begin by considering whether there is on the face of it an arguable case for leave to be granted.

[39] It seems that the content of the Proposed Decision shows that the respondent was effectively making a decision in principle on the infringement. We are of the view that the plain effect of the Proposed

Decision itself, was indeed a decision in principle. In fact, in its Proposed Decision, the respondent *inter alia* imposed a daily penalty of RM15,000 from the date of service of the Proposed Decision in the event the appellants failed to comply with the respondent's directions. The nature of the respondent's determination under s. 36 of the Act demonstrates that it was an important step on the path to decision-making under s. 40 of the Act.

[40] In our view, although part of the process remains to be gone through, there is already a decision that can be targeted.

[41] *Plainly, there was no final decision under s. 40 of the Competition Act. Under the provisions of s. 40, the final decision will only arise when the respondent gives notice of the decision stating the facts on which the respondent based the decision and its reasons for making the Proposed Decision. The appellants could have waited until such a determination.*

[42] *However, it does not follow that the appellants are necessarily precluded from mounting a challenge at this earlier stage. There is no automatic bar to challenge at this stage. Therefore, it is necessary to consider at the substantive stage the reasons set out by the respondent for its Proposed Decision. It is also necessary to consider whether a useful purpose would be served by allowing that Proposed Decision under s. 36 to be challenged in advance of a final decision if the court in its discretion considers that a useful purpose would be saved by such a challenge. Such challenges may be entertained in appropriate circumstances.* (emphasis added)

[26] We are in full agreement with the aforementioned legal propositions and find that the learned High Court Judge did not commit any appealable error in relying on and adopting the same in paras. [57] to [60] of the GOJ. We are also fortified by the English cases of *R (on the application of The Garden and Leisure Group Ltd) v. North Somerset Council and another* [2003] EWHC 1605 and *R (Shrewsbury and Atcham Borough Council) v. Secretary of State for Communications and Local Government* [2008] 3 All ER 548 CA where Carnwath LJ held as follow in the latter case with emphasis added by us:

Judicial Review proceedings may come after the substantive event, with a view to having its set aside or 'quashed'; or in advance, when it is threatened or in preparation, with a view of having it stayed or prohibited. In the latter case, the immediate challenge may be directed at decisions or actions which are no more than steps on the way to the substantive event. In the planning example, judicial review may be directed at a local authority resolution to grant permission while it is still conditional on, say, the completion of a highways agreement, even though the resolution can have no legal effect until the issue of the formal permission.

[27] To put simply, the judicial review application commenced by the respondents is not premature.

[28] Moving on in respect of by-passing or supplanting the domestic remedy of statutory appeal, we have carefully read ss. 35 to 40 of the Act and find that there is no provision to appeal on a proposed decision made under s. 36(1) of the Act. In other words, there is no internal remedial procedure available, contrary to what was alluded to by the appellant.

[29] Consequently, we again do not find that the learned High Court Judge committed any appealable error in paras. [61] and [62] of the GOJ.

[30] Thirdly, regarding the respondents' contention on the conduct of the investigation by the appellant, it is trite law that the proposed decision, which emanated from the investigation, is subject to *certiorari* if the decision is tainted with illegality, irrationality or procedural impropriety. In this regard, Edgar Joseph Jr FCJ held as follows in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* (*supra*):

> It is often said that judicial review is concerned not with the decision but the decision-making process. (See, *eg*, *Chief Constable of North Wales v. Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the Courts in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of **procedural impropriety**.
>
> But, Lord Diplock's other grounds for impugning a decision susceptible to judicial review makes it abundantly clear that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the Courts to scrutinise such decisions not only for process, but also for **substance**.
>
> In this context it is useful to note how Lord Diplock defined the three grounds of review, to wit, (i) **illegality**, (ii) **irrationality** and (iii) **procedural impropriety**. This is how he put it:
>
> > By 'illegality' as a ground for judicial review I mean that the decision maker must understand directly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of a dispute, by those persons, the Judges, by whom the judicial power of the state is exercisable.
> >
> > By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Limited v. Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.

> To justify the Courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards (Inspector of Taxes) v. Bairstow* [1956] AC 14, of irrationality as a ground for a Court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decisionmaker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.
>
> I have described the third head as **'procedural impropriety'** rather than failure to observe basic rules of natural justice or failing to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. (emphasis added)

[31] Upon our review, we are satisfied, as contended by the respondents, that the appellant is obliged to ensure a proper investigation is carried out pursuant to Part III of the Act on investigation and enforcement. Consequently, in issuing the proposed decision, the appellant must have given prior notification to the respondents regarding the investigation, including the subject matter thereof. Additionally, the appellant's power to request information, documents, and statements under s. 18(1)(a) and (b) of the Act must be exercised reasonably and in accordance with the Act.

[32] Thus, the investigation by the appellant must be predicated by a third-party complaint and tied thereto. The appellant must thereafter notify the respondents and the appellant may thereafter require any person whom the appellant believes to be acquainted with the facts and circumstances of the case to provide the information or document which is relevant to the investigation and/or making a statement providing an explanation or information.

[33] From the evidence adduced, we find that the appellant had investigated the 2018 complaints, including notifying the respondents and obtaining their responses between February and July 2019. However, there is no evidence that the appellant notified the respondents regarding the investigation of the 2019 complaint. The appellant has not provided a reasonable explanation for this omission. This is a critical issue, as it deprived the respondents of the opportunity to understand the precise complaint(s) against them. Despite the absence of a formal notification regarding the 2019 complaint, the appellant requested information from the respondents between May and June 2019. Upon comparing the appellant's requests for information related to the 2018 complaints and the 2019 complaint, we find that the latter was ambiguous and could not be meaningfully responded to.

[34] That notwithstanding, the appellant in its proposed decision found as follows:

> (273) Based on the evidence, the Commission found that Grab was intentionally refusing to comply with the request of the Commission in seeking the required information pursuant to the notice under section 18(1) of the Act dated 18.7.2019 such that it impelled the Commission to remind Grab of the penal consequences of failure to comply. The feet dragging conduct on the part of Grab unnecessarily impeded the investigation process. Therefore, the Commission hereby imposes an increment of 20% from the starting point of the financial penalty as stated in paragraph (264).

[35] In such circumstances, we find that the appellant was cavalier in the carrying out of the investigation of the 2019 complaint against the respondents. This is unfair and constitutes procedural impropriety.

[36] As the result, we find no appealable error by the learned High Court Judge in finding that the appellant's investigation was tainted with procedural impropriety in paras. [63] to [69] of the GOJ. In fact, we noted His Lordship also concluded that the appellant conflated the investigations of the 2018 complaints and 2019 complaint in the issuance of the proposed decision. The conclusion seems justified to us in the circumstances that prevailed at the material time.

Conclusion

[37] For the foregoing reasons, we find the appeal unmeritorious and is accordingly dismissed. The decision of the High Court is affirmed.

[38] We further order costs of RM50,000 to be paid by the appellant to the respondents subject to allocatur.